IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1971 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASSISTANT COLLECTOR
Versus
HARUNBHAI MOHAMMADBHAI PATEL AND OTHERS

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Appearance :
Mr ND Gohil, AGP for the appellant

None for the respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 02/08/2006

ORAL JUDGMENT

By filing this first appeal under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code the State through

Assistant Collector, Rajpipla has challenged the award passed by the Reference Court in Land Acquisition Reference No.41 of 1981. By the impugned judgment the learned Judge has enhanced the amount of compensation payable to the claimant and granted additional amount of compensation of Rs.9,395.20. Being aggrieved by the said judgment, this appeal is filed challenging the grant of additional claim of Rs.9,395.20.

On behalf of the Executive Engineer, Panchayat Department, Bharuch a proposal was made on 18th August 1977 to acquire certain lands for the purpose of laying down the road between Dradha-Dharoli at village Bhilod, Taluka Valia, District Bharuch. For this purpose, the Collector issued Notification under Section 4 which is dated 15.10.1977. Subsequently, Notification under Section 6 was also published and after hearing the concerned parties, the award was declared under Section 9(3)(4) of the Land Acquisition Act. The claimants claimed compensation at the rate of Rs.100 per Are as the appropriate market value for the lands in question. The claimants also prayed for compensation at Rs.5 per foot in respect of the underground pipeline laid by them for irrigation purpose. The Land Acquisition Officer awarded compensation at the rate of Rs.32.50 per square meter in respect of Jirayat lands and at the rate of Rs.60 per square meter in respect of Kyari lands. The Land Acquisition Officer awarded Rs.125/- only for the pipeline.

The claimants being aggrieved by the said amount of compensation requested the Special Land Acquisition Officer to make a reference to the District Court under Section 18 of the Act. The claimants prayed for compensation at the rate of Rs.100 per Are and also prayed for additional amount for pipeline. The learned Judge after

considering the evidence on record came to the conclusion that the claimants are entitled for additional compensation. The learned Judge fixed Rs.100 per Are as the appropriate value of the land. The learned Judge has also granted compensation at the rate of Rs.5 per feet for 2000 fts pipeline and accordingly granted Rs.10,000 under the aforesaid head.

On behalf of the claimants one Harunbhai Mohamadbhai was examined at Exhibit 13. The said witness has relied upon the registered sale deed of agricultural land which was sold in village Bhilod on 29.4.1972 by which land admeasuring 2 hectares 41 Are and 91 Square Meters was sold at Rs.29,500, which would come to Rs.121 per Are. On behalf of the claimants reliance was also placed on previous judgment at Exhibit 39 of the District Court wherein the learned Joint District Judge was pleased to award compensation at the rate of Rs.100 per Are for the lands acquired at Dharoi village.

Considering the evidence on record, in my view, the amount fixed in the present case is just and proper and it cannot be said that the amount fixed by the trial Court is on higher side. Learned AGP, Mr Gohil is also not a position to point out as to how the said valuation is on higher side especially when the trial Court has considered the previous judgment and sale deed of the adjoining village. So far as the fixation of the value of the pipeline is concerned, the learned Judge has come to the conclusion that the meager amount of Rs.125 was awarded. Regarding the measurement documentary evidence was produced by the claimants at Exhibit Nos.20, 21 and 22. Though the opportunity was given, the Department has not examined the Engineer. Under the circumstances, on the basis of the evidence on record, the learned Judge has determined the length of the pipeline and accordingly granted the compensation at

the rate of Rs.5 per meter. Therefore, in my view, the order of the learned Trial Judge is not required to be interfered with by this Court. The learned Judge has found in paragraph No.10 of his judgment that the existence of the pipeline is even admitted by the Department. One Arvindbhai Mistry, who was a Graduate in Civil Engineering and who is also doing the business of contractor prepared the sketch of the land and the length was estimated at 2248 feet. The learned Judge has also made a local inspection of the site with the advocates for both the parties and got prepared the inspection note. Of course, though no weightage can be given to the same, in my view, when the learned Judge has awarded the compensation for the pipeline considering the evidence of the length of the pipeline, the same is not required to be interfered with by this Court.

It is pertinent to note that the net additional amount payable to the claimants in the appeal is a very small amount of Rs.9395.20. On this point, reference is required to be made to various judgments of this Court. The learned Single Judge of this Court in First Appeal No.1117 of 2003 has observed in paragraphs nos.3 and 4 as under:-

> *"3. It may be noted that learned single Judge of this Court as well as a Division Bench of this Court in number of matters have dismissed appeals filed by the appellant challenging the awards of the reference courts on the ground of smallness of the amount. The Division Bench of this Court (Coram: M.H. Kadri & C.K. Buch, JJ.) in First Appeal Nos.6765 of 1999 to 6804 of 1999 vide judgment dated 29.3.2000 has considered an amount of Rs.25,500/- awarded to the claimant, without considering other statutory benefits, as small amount. In the said judgment it has been observed that it is the consistent practice which is followed by various Division Benches of this Court*

that wherein claim involved in the Land References cases is less than Rs.35,000/-, appeal should be dismissed on the ground that it involves petty claim.

4. Applying the principles laid down by the Division Bench of this Court in the judgment recorded in First Appeal Nos.6765 of 1999 to 6804 of 1999 to the facts of the present case, in the instant case, the original amount awarded to the respondent is Rs.11,425/- plus statutory benefits, which comes in all to Rs.16,223.50 and, therefore, this amount being a small amount, the appeal deserves to be dismissed on the ground of petty claim."

It is not in dispute that the additional amount for which the appeal is filed in the Court is small amount and considering the decision of this Court referred to above this appeal deserves to be dismissed.

Considering the aforesaid aspect of the matter, I do not find any substance in this first appeal. Hence, this appeal is dismissed with no order as to costs. Record and proceedings be sent to to the lower court forthwith.

(***P.B.Majmudar, J.***)

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